

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01/03/2004

Coram

The Hon'ble Mr. Justice K.GOVINDARAJAN
and
The Hon'ble Mr. Justice N.KANNADASAN

O.S.A.No.6 of 2003
and
CMP No.693 of 2003

1.R.Babu

2.M/s.J.K.Ansell Ltd.,
G.35 & 36 MIDC Waluj,
Aurangabad 431 136. .. Appellants

-vs-

TTK LIG Ltd.,
Formerly London Rubber Co. (India)Ltd.,
rep., by its President (Operation),
No.6, Cathedral Road,
Chennai-600 086. .. Respondent

This Appeal is preferred against the judgment and decree of this
Court dated 20.12.2002 in O.A.No.354 of 2002 in C.S.No.351 of 2002.

! For Appellants : Mr.H.Karthik Seshadri

^ For Respondent : Mr.R.Parthasarathy

:JUDGMENT

N. KANNADASAN, J.

The appellants are the defendants and the
respondent herein is the plaintiff in the suit. The suit is
filed for permanent injunction restraining the first defendant
from continuing employment in the second defendant and for other
reliefs. The plaintiff has filed an application in Application
No.353 of 2002 for an injunction restraining the second defendant

from in any manner using or utilising any information whatsoever obtained from the first defendant with respect to manufacture of rubber latex condoms pending disposal of the suit. The plaintiff has also filed another application in Application No.354 of 2002 to pass an order of injunction restraining the first defendant from continuing his employment with the second defendant or in any manner violating the terms of negative covenants contained in the agreement dated 1.5.1990 entered into between the plaintiff/applicant and the first defendant pending disposal of the suit. The plaintiff has filed the abovesaid applications on the ground that the first defendant while employed with the plaintiff has entered into an agreement on 1.5.1990 wherein it was specifically agreed that the first defendant should not furnish any data and information relating to the formulation for manufacture of condoms and other items and he would also not seek any employment in any establishment elsewhere of similar nature for a period of five years after he ceases to be an employee. However, when the first defendant has submitted a letter of resignation on 16.1.2002 on personal grounds, the plaintiff without suspecting anything has accepted his resignation with effect from 15.2.2002. The plaintiff came to know during the second week of May 2002 that the first defendant had taken employment with the second defendant company as Manager (Production). Hence, there is a breach on the part of the first defendant with regard to the terms of the agreement dated 1.5.1990 and prayed for the grant of interim orders. The application was resisted by the first defendant that he would give an undertaking to the effect that he would not disclose any information whatsoever with regard to the knowledge which has been acquired by him during his employment in the plaintiff company. But however, resisted the claim of the plaintiff in application No.354 of 2002 to the effect that the negative covenant is unenforceable in law and violative of Section 27 of the Indian Contract Act, 1872. The learned Judge has allowed the applications by order dated 20.12.2002. Aggrieved against the same, the appellants have filed the above appeal.

2. The appellants have filed the above appeal challenging the order of the learned Judge passed in application No.354 of 2002 alone. The learned counsel for the appellant has contended that there is no privity of contract between the first appellant with the plaintiff inasmuch as he was originally employed in the Company called London Rubber Company (India) Limited and the agreement was entered into only with the said company and as such, the said agreement is unenforceable by the plaintiff. It is further contended that the learned Judge has not correctly applied the principles laid down by the Honourable Supreme Court in its judgment rendered in *Superintendence Company of India (P) Ltd., vs. Krishan Murgai* (AIR 1980 Supreme Court 1717). According to the learned counsel, the Supreme Court in the judgment referred to above has clearly held that the negative

covenant after the employment has come to an end is unenforceable in law and contrary to Section 27 of the Indian Contract Act, 1872. It is also contended by him that the Division Bench of this Court in its decision in *Rajan, G.R.V. v. Tube Investment of India Ltd* (1995 1 LW 274) has clearly set out the proposition of law by following the principle laid down by the Supreme Court in the decision referred to above. According to the judgment of the Division Bench, the Supreme Court has held that such a negative covenant restraining the employee from taking up employment with the third party after he ceases to be an employee is violative under Section 27 of the Indian Contract Act, 1872.

3. Per contra, the learned counsel appearing for the respondent has contended that the order of the learned Judge is sustainable in law inasmuch as the judgment of the Supreme Court rendered in *Krishan Murgai's* case supports the view expressed by the learned Judge.

4. The point for consideration is:-

"Whether the order of the learned Judge is sustainable in law?"

5. We have considered the rival contentions of the parties.

6. Even though a contention is urged by the learned counsel for the appellants to the effect that there is no privity of contract by the first appellant with the plaintiff, more emphasis is made with regard to the next submission viz., violation of Section 27 of the Indian Contract Act with regard to the negative covenants of the agreement dated 1.5.1990. Even though the learned counsel for the respondent has contended that the relevant portion in *Krishan Murgai's* case relating to the violation of Section 27 of the Indian Contract Act was delivered by the learned single Judge, viz., His Lordship A.P.SEN, J., who according to him dissented with the majority of the two other learned Judges of the Bench and as such, the same is not applicable, we do not agree with the said argument. A perusal of the said judgment discloses that no injunction can be granted against an employee after the termination of his employment, restraining him from carrying on a competitive trade. In fact, even though the above proposition of law was laid down by the learned Judge, finally all the three learned Judges held that the judgment of the Delhi Bench was correct and dismissed the appeal. Hence, the judgment of His Lordship A.P.SEN, J., cannot be construed as a dissenting judgment. It is a case in which two learned Judges of the Bench did not deal with the question while the third learned Judge dealt with and also declared the law. The dictum of His Lordship A.P.SEN, J., is undoubtedly the law declared by the Supreme Court as contemplated by Article 141 of the Constitution of India and it shall be binding on all Courts within the territory of India and there is no escape from that

conclusion. Unfortunately, the learned single Judge has erroneously held that the above said judgment is not applicable to the case on hand. The learned single Judge has proceeded on the footing that the judgment of the Supreme Court reported in N.S.Golikari v. Century Spinning and Manufacturing Company Ltd (AIR 1967 SC 1098) and other judgments relied on by the learned counsel for the plaintiff supports the claim of the plaintiff.

7. We do not agree with the said reasoning of the learned Judge inasmuch as the principle laid down by the Supreme Court in Krishan Murgai's case which squarely applies to the present case on hand. The similar view as we have expressed above is the view of the Division Bench of this Court in the judgment in Rajan, G.R.V. v. Tube Investment of India Ltd (1995 1 LW 274).

8. For the reasons stated above, we hold that the order of the learned Judge is not sustainable in law and so it is set aside. Consequently the application No.354 of 2002 is liable to be dismissed. The appeal is allowed. No costs. Consequently, connected CMP is closed.

(K.G., J.) (N.K.,J.)
01.03.2004

Internet : Yes.
Index : Yes. Svn

To

The Sub Asst. Registrar,
Original Side, High Court, Chennai.104.

□